

IV. REMARKS REGARDING AMENDMENTS TO THE SPECIFICATION

1. The Examiner notes at Page 2 of the Action that the last sentence under the heading "Continuation In Part Application on page 12 should be deleted because reference to page 56 would have no meaning in a resulting patent. Your applicant observes that the indicated section of the CIP Application appears at page 1 of the application. The identified sentence has been deleted.

2. The Examiner notes at page 2 that lines 7 and 8 of page 7 should be cancelled and that an information disclosure statement is not in the file wrapper of this application. However, the Examiner states that she has considered the prior art cited in the IDS filed in application Serial No. 09/524,349. Your applicant has deleted the indicated lines 7 and 8 of page 7.

3. The Examiner notes at page 2 of the Action that underlining and bold type on pages 1, 2, 7, 11, 19, 54, 55, 56 and 60-63 must be deleted. Your applicant has deleted the indicated underlining and bold type.

V. REMARKS REGARDING OBJECTIONS TO THE CLAIMS AND AMENDMENTS TO THE CLAIMS

1. The Examiner has Objected to the claims regarding subsections of the claims being setoff by alphas followed by periods and required the periods to be cancelled. Your applicant has amended to delete all alphas and periods denoting subsections. Your applicant respectfully submits that the "periods" identified are not such but are outline markers with no punctuation function.

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on June 8, 2004 by Floyd E. Ivey,
Serial No. 09/804,613

Application No. 09/804,613

Floyd E. Ivey, USPTO 35532,

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2. The Examiner has Objected to claims 9 and 25 because they include reference characters which are not enclosed within parentheses. The said claims have been amended.

3. The Examiner has objected to "common to the industry" and "common to other industries" in claim 54. The indicated phrases have been stricken.

VI. REMARKS REGARDING 112 REJECTIONS OF CLAIMS AND AMENDMENTS TO THE CLAIMS

1. The Examiner, at page 3, has rejected claims 16-19 and 63 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Regarding claim 16, the Examiner states that claim 16 contradicts claim 9. Claim 9 specifies that the at least one detector is a light pickup fiber. Dependent claim 16 specifies that the at least one light detector is comprised of a plurality of light detectors. Dependent claim 18 inherits the problem of claim 16.

In claim 9, the phrase ~~the at least one light detector is a light pickup fiber~~, has been stricken. The phrase has been added to claim 10. Your applicant believes that the amendments of claim 9 and 10 remedies the basis of the indicated rejection of claim 16 and 18 and respectfully requests the Examiner to withdraw the rejection of said claims and allow the claims as amended. THE EXAMINER'S ACTION OF APRIL 13, 2004 REQUIRED AMENDMENT OF CLAIM 9 TO CORRECTLY ENCLOSE REFERENCE CHARACTER 182 WITHIN PARENTHESES IN LINE 31. THIS AMENDMENT HAS BEEN MADE.

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2 b. Regarding claim 17, the Examiner states at page 3 that lines 2 and 3 are
3 confusing and not understood and that correction or clarification is required. Claim 17
4 has been amended to eliminate reference to "detector" and to refer only to light "source".
5 Your applicant respectfully requests the Examiner to withdraw the rejection and allow the
6 claim.

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8 c. At page 3 the Examiner states that the nature of the at least one light source is
9 confusing as set forth in lines 2-5 of claim 19 and questions if the at least one light source
10 is comprised of an ellipsoidal reflector having a 50 w bulb with a cooling fan or is the at
11 least one light source a plurality of illumination fiber? The claim required correction or
12 clarification. Claim 19 has been amended. Your applicant requests the Examiner to
13 withdraw the rejection.

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15 d. At page 4 the Examiner states, regarding line 4 of claim 19, that it appears that
16 "one" should be ~~two~~. Claim 19 has been amended to strike "one" and add ~~two~~.
17 Your applicant respectfully requests the Examiner to withdraw the rejection.

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19 e. at page 4 the Examiner states, regarding claim 63, that the use of "e.g." renders
20 the claim indefinite because it is unclear whether the limitation following "e.g." is part of
21 the claimed invention. Claim 63 has been amended by striking "~~(e.g., 40% of the~~
22 ~~original number of samples)~~". Your applicant requests the Examiner to withdraw the
23 rejection.

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25 F. AT PAGE 2 OF THE EXAMINER STATES THAT REFERENCE

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1 CHARACTER 30, IN CLAIM 25, LINES 4 AND 7, IS NOT ENCLOSED IN
2 PARENTHESES. CLAIM 25 HAS BEEN SO AMENDED.

3 G. AT PAGE 2 THE EXAMINER STATES THAT PROPOSED CLAIM 17
4 CONTRADICTS CLAIM 15 IN THAT CLAIM 15 SPECIFIES THAT THE AT LEAST
5 ONE LIGHT SOURCE IS A 5W TUNGSTEN HALOGEN LAMP, WHILE PROPOSED
6 CLAIM 17 SPECIFIES THAT THE AT LEAST ONE LIGHT SOURCE IS A
7 PLURALITY OF LIGHT SOURCES. CLAIM 17 HAS BEEN AMENDED TO
8 DEPEND FROM CLAIM 9.

9 H. AT PAGE 2 THE EXAMINER STATES THAT IN LINE 6 OF PROPOSED
10 CLAIM 19, "one" (first occurrence) should be ~~two~~ to be consistent with the change in
11 line 4 of proposed claim 19. THE AMENDMENT HAS BEEN MADE.

12 I. AT PAGE 2 THE EXAMINER STATES THAT IN PROPOSED CLAIM 63,
13 "(e.g., Score 1 vs. Score 2, Score 3 vs. Score 4, etc)" HAS NOT BEEN DELETED. THE
14 AMENDMENT HAS BEEN MADE TO STRIKE THE "(e.g., Score 1 vs. Score 2, Score
15 3 vs. Score 4, etc)".

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17 **VII. OBVIOUSNESS-TYPE DOUBLE PATENTING**

18 1. At page 5-6, the Examiner rejects claims 1-7 as obviousness-type double patenting
19 relative to claims 1-7 of Patent No. 6,512,577. The Examiner states that "although the
20 conflicting claims are not identical, they are not patentably distinct from each other
21 because the claims of the patent anticipate the claims of the application. The Examiner
22 notes at page 6 that a terminal disclaimer is not present in the file although such is
23 referred to in the amendment filed on October 3, 2003. At page 5 the Examiner states
24 that a timely filed terminal disclaimer in compliance with 35 CFR 1.321(c) may be used
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1 to overcome a rejection based on a nonstatutory double patenting ground provided the
2 conflicting application or patent is shown to be commonly owned with this application.
3 Counsel for your applicant provides the requisite Terminal Disclaimer. The conflicting
4 application and patent are commonly owned by Richard Ozanich. Your applicant
5 respectfully requests the Examiner to withdraw rejections of claims 1-7 and to allow the
6 claims as amended.

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8 **VIII. ALLOWABLE SUBJECT MATTER**

9 1. The Examiner advises that claim 23 is allowed over prior art of record.

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11 2. The Examiner states that claims 9-15, 20-22, 24-62 are objected to as being
12 dependent upon a rejected base claim but would be allowable if rewritten in independent
13 form including all of the limitations of the base claim and any intervening claims and
14 correcting any objection set forth by the Examiner.

15 Claim 9 has been amended to include all limitations of claim 8. Claims 10-15,
16 16-19, 20-22, 31-36, 46, 49, and 50 depended from or have been amended to depend
17 from claim 9 or intervening claims depending from claim 9. Your applicant requests the
18 Examiner to withdraw the rejection of said claims and to allow the claims as amended.

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21 3. A Terminal Disclaimer re: claims 1-7 has been submitted and the Examiner
22 has been requested to withdraw the rejection of claims 1-7 on the basis that no Terminal
23 Disclaimer existed. Claims depending from rejected claim 2 include 24-30, 37-45, 47,
24 48, 51-63. All rejections under 35 USC 112 have been cured by amendment. A Terminal
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1 Disclaimer has been submitted. Your applicant respectfully requests the Examiner to
2 withdraw rejections to said claims and to allow the claims as amended.
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VIII. SUMMARY OF AMENDMENTS AND REMARKS

The applicant has previously reviewed the Examiner's Communication of March 17, 2004 and now has reviewed the Examiner's Communication of April 13, 2004 and has addressed the form of claim amendment by submission, herein, of all claims with indication of the status of each claim in accordance with USPTO Claim Amendment format requirements.

Each aspect of this response is presented by your applicant as a good faith attempt to make this application ready for allowance. Your applicant has cancelled claim 8. Your applicant has made a good faith effort in amending to comply with all objections and rejections. Your applicant respectfully requests the Examiner to allow all claims as amended.

Accordingly your applicant requests the Examiner to receive the Response and Amendments submitted herewith and to allow the application and grant the claims as amended.

Respectfully submitted,

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CERTIFICATE OF TRANSMISSION:

The undersigned hereby certifies that this correspondence is being facsimile transmitted to Examiner F. L. EVANS, Telephone 571-272-2414, ART UNIT 2877 at the Patent and Trademark Office Fax No. (703) 872-9306 on June 8, 2004.

Signature
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